

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: William Rasenberger	Team: Squad #7	CCRB Case #: 202104598	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input checked="" type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 07/25/2021 7:49 PM, Thursday, 11/18/2021 11:00 AM	Location of Incident: north-east corner of Lafayette Avenue and Edgewater Road	Precinct: 41	18 Mo. SOL 1/25/2023	EO SOL 1/25/2023	
Date/Time CV Reported Sun, 07/25/2021 10:55 PM	CV Reported At: IAB	How CV Reported: E-mail	Date/Time Received at CCRB Wed, 08/04/2021 10:59 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. SGT Jose Rosa	05148	942474	041 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jonathan Pagan	03338	961989	041 PCT
2. DTS Herawattie Jeeuth	04342	917102	041 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Jose Rosa	Force: On July 25, 2021, Sergeant Jose Rosa struck § 87(2)(b) with a vehicle.	[REDACTED]
B.SGT Jose Rosa	Untruthful Stmt.: On November 18, 2021, Sergeant Jose Rosa provided a misleading official statement to the CCRB.	[REDACTED]

## Case Summary

On August 4<sup>th</sup>, 2021, the CCRB received the following complaint, via e-mail, from § 87(2)(b) who witnessed the incident and is unrelated to the victim [BR 1].

On July 25<sup>th</sup>, 2021, § 87(2)(b) was travelling northbound, on a moped or similar vehicle, on Whittier Street in the Bronx, when officers assigned to a traffic enforcement detail attempted to stop him. § 87(2)(b) rode onto the sidewalk to evade the officers. In an unmarked vehicle, Sgt. Jose Rosa of the 41 Precinct pursued § 87(2)(b) as he continued north on Whittier, and then turned onto Lafayette Avenue. When § 87(2)(b) turned from Lafayette Avenue onto Edgewater Road, he lost control of his moped and crashed. Sgt. Rosa then drove his vehicle into § 87(2)(b) motorcycle and into § 87(2)(b) himself [Allegation A: Force – Vehicle, § 87(2)(g)]. Sgt. Rosa arrested § 87(2)(b). § 87(2)(b) was charged with reckless endangerment in the second degree as well as numerous infractions of the Vehicle and Traffic Law. Sgt. Rosa falsely testified during his CCRB interview that his vehicle did not make physical contact with § 87(2)(b) or his motorcycle [Allegation B: Untruthful Statements – Misleading Official Statement, § 87(2)(g)].

The CCRB is in possession of three body-worn camera videos [BR 2] and one CCTV video [BR 3] of the incident.

## Findings and Recommendations

### Allegation A: Force – On July 25, 2021, Sergeant Jose Rosa struck § 87(2)(b) with a vehicle.

At about 7:45 p.m. on July 25<sup>th</sup>, 2021, Sgt. Rosa drove his RMP into § 87(2)(b) seconds after § 87(2)(b) lost control of his motorcycle and crashed, while turning from Lafayette Avenue onto Edgewater Road. A subclip of CCTV video recorded by § 87(2)(b) [BR 4] shows § 87(2)(b) losing control of his moped (00:02) and falling onto the roadway. Sgt. Rosa is then seen turning onto Edgewater Road. § 87(2)(b) walks toward his fallen moped (00:08), and is apparently reaching for it, when Sgt. Rosa drives into both the moped and § 87(2)(b). The collision knocks § 87(2)(b) back down to the roadway. His moped slides some feet along the pavement before coming to rest to the right of Sgt. Rosa's RMP. § 87(2)(b) who was a passenger in a vehicle stopped at the nearby intersection of Edgewater and Drake Avenue, testified during her CCRB interview [BR 5] that Sgt. Rosa's vehicle appeared to accelerate before striking § 87(2)(b). The collision was very loud, § 87(2)(b) noted in an e-mail [BR 6] to the Internal Affairs Bureau. The investigation attempted to obtain a statement from § 87(2)(b). The undersigned investigator placed multiple calls to a number associated with § 87(2)(b) according to a CLEAR public records report. § 87(2)(b) did not answer or return any of these calls.

A few minutes before the collision, officers in Sgt. Rosa's unit -- which he described as a "motorcycle initiative" tasked with seizing unregistered motorcycles -- attempted to stop § 87(2)(b) on Whittier Street. BWC footage recorded by Detective Herawattie Jeeuth [BR 7] shows § 87(2)(b) riding onto a sidewalk (00:37), briefly stopping, and then riding away as officers walk toward him. He nearly strikes an officer who is trying to stop him. He is then heard driving into a metal barrier, that Sgt. Rosa's "motorcycle initiative" had erected to deter motorcyclists from riding on the sidewalk. Sgt. Rosa testified during his CCRB interview [BR 8] that he was approaching this barrier from the opposite side when § 87(2)(b) ran into it. The collision displaced the barrier, which then struck the side of Sgt. Rosa's body. Sgt. Rosa entered his unmarked RMP, he stated, activated the vehicle's emergency lights and sirens, and reversed along Whittier Street in pursuit of § 87(2)(b). He continued to pursue § 87(2)(b) as § 87(2)(b) turned east onto Lafayette Avenue, and then from Lafayette Avenue onto Edgewater Road. According to Sgt. Rosa, there were very few civilians along the route of the pursuit, and he maintained a low rate of speed as he

followed § 87(2)(b) Sgt. Rosa testified that he would have stopped the pursuit at the intersection of Lafayette Avenue and Edgewater Road if § 87(2)(b) had successfully completed the turn onto Edgewater Road and continued to flee.

During her CCRB interview, § 87(2)(b) stated that she was in a vehicle stopped at a red light on Lafayette Avenue, at the intersection with Edgewater Road, when § 87(2)(b) passed on the vehicle's right. Sgt. Rosa then drove past § 87(2)(b) at thirty to forty miles per hour. Against Sgt. Rosa's testimony, his vehicle had neither its emergency lights nor sirens activated, § 87(2)(b) stated. It is undisputed that § 87(2)(b) lost control of his moped while turning from Lafayette Avenue onto Edgewater Road. Sgt. Rosa briefly stopped his vehicle when § 87(2)(b) lost control of his moped, § 87(2)(b) stated. He then accelerated very quickly, reaching a speed of perhaps forty to fifty miles per hour, and drove through the red light. It appeared to § 87(2)(b) that he was "speeding up to bang into § 87(2)(b)

Sgt. Rosa denied that his vehicle made any physical contact with § 87(2)(b) or his moped. Rather, Sgt. Rosa testified, he stopped his vehicle a few feet away from § 87(2)(b) just after he'd fallen to the road. When presented with the video recorded by § 87(2)(b) Sgt. Rosa acknowledged that it shows his vehicle striking § 87(2)(b) He had not been aware of the collision, he stated, before watching the video. Sgt. Rosa testified that he did not consider § 87(2)(b) to pose any danger before colliding with him and acknowledged that it is against department policy to strike a person with a vehicle. The video evidence shows that Sgt. Rosa had a clear line of sight to, and room to maneuver around, § 87(2)(b) and his motorcycle. Sgt. Rosa apparently made no attempt to avoid the collision.

Under Patrol Guide 221-15, a vehicle pursuit must be terminated whenever the risks to members of the service and the public outweigh the danger to the community if the suspect is not immediately apprehended. To determine the necessity for commencing and continuing a vehicle pursuit, an officer must consider the nature of the offense, the time of day, weather conditions, location and population density, and familiarity with the area. Unmarked department vehicles must limit pursuits. Members of service are prohibited from ramming vehicles. NYPD Patrol Guide Procedure § 221.15 [BR 9].

Under NYS Vehicle and Traffic Law § 1104, emergency vehicles may, in the course of an emergency operation, exceed the speed limit and disregard traffic lights. However, at all times the operator of an emergency vehicle has a duty to drive with due regard for the safety of all persons. He is not protected from the consequences of his reckless disregard for the safety of others. New York State Vehicle and Traffic Law § 1104 [BR 10].

The Patrol Guide prohibits officers from ramming vehicles, and, by implication, the operators of vehicles. Video shows that Sgt. Rosa's RMP struck § 87(2)(b) and § 87(2)(b) motorcycle. Sgt Rosa did not provide any justification for the collision and denied that he recalled it. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

#### **Allegation B: On November 18, 2021, Sergeant Jose Rosa provided a misleading official statement to the CCRB**

There is no mention of Sgt. Rosa's collision with § 87(2)(b) and his motorcycle in any of police documentation regarding the incident. A Motor Vehicle Collision worksheet [BR 11] notes simply that § 87(2)(b) fell from his motorcycle while trying to evade the police. As stated above, Sgt. Rosa denied during his CCRB interview that his vehicle came into physical contact with § 87(2)(b) or his motorcycle. He claimed that he only became aware of the collision after being presented, during the interview, with the footage recorded by § 87(2)(b) Although after viewing this footage, Sgt. Rosa acknowledged that his RMP struck § 87(2)(b) and his motorcycle, he maintained that he did not recall the collision.

Sgt. Rosa's testimony is implausible in view of § 87(2)(b) testimony and the video

evidence. § 87(2)(b) who was at least one hundred feet away from the collision, was able to say with certainty that Sgt. Rosa “intentionally sped up and rammed his vehicle into § 87(2)(b).” Further, § 87(2)(b) reported to IAB that Sgt. Rosa “hit § 87(2)(b) very hard,” producing “a very loud sounding noise.” As the video recorded by § 87(2)(b) shows, Sgt. Rosa’s vehicle collided head on with § 87(2)(b) motorcycle, causing it to slide some five to ten feet along the pavement, before coming to rest in front of Sgt. Rosa’s RMP. Meanwhile, the collision knocked § 87(2)(b) to the ground. There is no doubt that Sgt. Rosa would have heard – and almost certainly would have felt – the impact of the collision. There was, then, no ambiguity as to whether Sgt. Rosa’s vehicle hit § 87(2)(b) and his moped. (Again, Sgt. Rosa acknowledged that officers may never use their vehicles as ramming instruments, and that there was no justifiable reason for ramming into § 87(2)(b).

Under Administrative Guide § 304-10, a false statement is defined as an intentional statement that a member of the service knows to be untrue, which is material to the outcome of the investigation or other matter in connection with which the statement is made. A material fact is defined as a significant fact that a reasonable person would recognize as relevant to, or affecting, the subject matter of the issue at hand, including any foreseeable consequences, or establishment of the elements of some proscribed conduct. It is a fact that is essential to the determination of the issue and the suppression, omission, or alteration of such fact would reasonably result in a different decision or outcome. Officers are prohibited from intentionally making a false official statement. Circumstances in which false or misleading official statements are made include but are not limited to, verbal statements made pursuant to a statutory or procedural requirement, or under oath during a civil, administrative, or criminal proceeding. When a member of the service is afforded an opportunity to recollect with the benefit of credible evidence, and the member makes a statement consistent with the evidence, the member’s prior statement will not be considered a false statement. However, it may be considered a misleading or inaccurate statement, or an action impeding the investigation. A misleading statement is a statement that is intended to misdirect the fact finder, and materially alter the narrative by: 1) intentionally omitting a material fact or facts, 2) making repeated claims of “I do not remember” or “I do not know” when a reasonable person under similar circumstances would recall, or have been aware of, such material facts, or 3) altering and/or changing a member’s prior statement or account when a member of the service is confronted with independent evidence indicating that an event did not occur as initially described. NYPD Administrative Guide § 304 – 10 [BR 12]

Sgt. Rosa denied that his vehicle struck § 87(2)(b) or his motorcycle. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Whether Sgt. Rosa gave a false official statement, as opposed to a misleading statement, depends on the interpretation of “the member makes a statement consistent with the evidence” (after being presented with evidence so as to aid the member’s recollection). Sgt. Rosa continued, after watching CCTV video of the incident, to maintain that he had no recollection of the collision. He did acknowledge, though, that the video shows his vehicle striking § 87(2)(b) and his scooter. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which either § 87(2)(b) or § 87(2)(b) have been parties [BR 13 and 14].
- Sgt. Rosa has been a member of service for fifteen years, over which time he has been the subject of ten complaints and twenty-three allegations, none of which have been

substantiated. § 87(2)(g) [REDACTED]  
[REDACTED]

**Mediation, Civil, and Criminal Histories**

- This complaint was not suitable for mediation.
- According to the New York City Comptroller's Office, there are no notices of claim related to this incident [BR 16].
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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Squad: 7

Investigator:	<u>Will Rasenberger</u> Signature	<u>Inv. Will Rasenberger</u> Print Title & Name	<u>12/01/2021</u> Date
Squad Leader:	<u></u> Signature	<u>Manager Vanessa Rosen</u> Print Title & Name	<u>July 7, 2022</u> Date
Reviewer:	<u></u> Signature	<u></u> Print Title & Name	<u></u> Date